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PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte AMAN GUPTA, AMIT MAHESHWARI, and JAMES A.
YENERICH

_____

Appeal 2009-010002
Application 09/747,647
Technology Center 3600

_____

Before: MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
BIBHU R. MOHANTY, *Administrative Patent Judges.*

FISCHETTI, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing,
as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE"
(paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery
mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Appellants seek our review under 35 U.S.C. § 134 (2002) from the Examiner's non-final rejection of claims 1-21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

THE CLAIMED INVENTION

Appellants' claim a method, media, and signal for reporting the status of shipping readiness of a product being produced (Specification ¶1). Claim 1 is illustrative of the claimed subject matter:

> 1. A method for reporting status of work in progress, comprising the steps of:
>   periodically querying an electronic database that contains data indicating an order number, a promise date, a request date, a shipment date, and a product category for a plurality of products/services offered;
>   comparing the promise dates and the request dates;
>   setting a proactive promise alert if a promise date is later than a request date for a given order; and
>   displaying the proactive promise alerts with the order numbers for those given orders that have a promise date that is later than their respective request date.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Martin	US 5,809,479	Sep. 15, 1998
Dietrich	US 6,032,121	Feb. 29, 2000
Schoenberg	US 6,322,502 B1	Nov. 27, 2001

<center>REJECTIONS</center>

The following rejections are before us for review.

The Examiner rejected claims 1-21 under 35 U.S.C. § 103(a) as unpatentable over Martin, Dietrich, and Schoenberg.

The Examiner rejected claim 4 under 35 U.S.C. § 112 Second Paragraph as indefinite.

The Examiner rejected claims 15-21 under 35 U.S.C. § 101 as claiming unpatentable subject matter.

<center>ISSUES</center>

Did the Examiner err in rejecting claims 1-21 under 35 U.S.C. § 103(a) as unpatentable over Martin, Dietrich, and Schoenberg since Martin discloses sending notification to a human scheduler if a customer-requested arrival date cannot be met by automated scheduling of a ship date?

Did the Examiner err in rejecting claims 15-21 under 35 U.S.C. § 101 as claiming unpatentable subject matter since the claim is for a signal?

<center>FINDINGS OF FACT</center>

We find the following facts by a preponderance of the evidence.

1. The Specification does not define the term *alert*.

2. The ordinary and customary definition of the term *alert*, as defined by Merriam Webster's Collegiate Dictionary (10th ed.), is: "an alarm or other signal of danger, or an urgent notice."

3. Martin discloses determining a promise date based on a customer's request date in which the "resulting customer-preferred ship date would represent the date the customer order would have to leave the supplier's

<center>3</center>

site to arrive at the customer's site on the date preferred by the customer." (Col. 3 ll. 49-55).

4. Martin discloses an alert to a scheduler if the requested date cannot be met, stating, "it might not be possible for the supplier to meet a requested or preferred date. Accordingly, the customer order entry is routed to a human order scheduler for assignment of a targeted ship date …" (Col. 3 ll. 57-61).

5. The Specification does not define the term *proactive*, but describes by example that *proactive* "is meant to show that an alert may be set while there is still time to rectify a possible problem in the process, in this case, shipping." (Specification 16:3-5).

6. Dietrich discloses "proactive planning" methods which "can provide advanced warnings to planners and to the corresponding execution teams, rather than just [providing] reactive responses." (Col. 2 ll. 57-61).

7. The Specification does not define *reactive alerts* but describes that the "reactive alert may not provide the same information [as that provided by a *proactive alert* that allows adjustments to avoid a late shipment], but the information is still useful to ensure that recognized problems do not occur. (Specification 16:3-8).

8. Schoenberg discloses *reactive alerts* in the form of an alarm for actions not performed by their due date, because "[c]ompliance with orders is tracked as well, and the display screen can indicate an alarm or other warning indicator which notifies the medical team that an order has not yet been carried out." (Col. 5 ll. 44-47).

9. It is our understanding that it is common to organize displays of information of varying types by the type of information displayed, such

as through headings or grouping like information together, so that the detailed information is easier to understand.

10. Schoenberg discloses *reactive alerts* in the form of reminders of action to be taken, by way of the system providing "for the entry and monitoring of action items, such as, for example, orders for drugs or other treatments. Operational reminders are then generated and transmitted to the medical team." (Col. 5 ll. 39-42).

ANALYSIS
Claims 1-8, Rejection under 35 U.S.C. § 103(a)

We affirm the rejection of claims 1-8. Appellants do not provide a substantive argument as to the separate patentability of claims 2-8 that depend from claim 1, which is the sole independent claim among those claims. Therefore, we address only claim 1. Claims 2-8 fall with claim 1. *See*, 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Appellants assert, "Martin et al. does not disclose the generation of any alert as called for in claim 1 nor is there a need or motivation to generate or display any alert in the system of Martin et al." (Appeal Br. 14).

We are not persuaded by Appellants' arguments because we find that Martin attempts to schedule promise dates to satisfy request dates (FF 3), but that if a promise date would not satisfy the request date, an alert is sent to a human scheduler (FF 4), thus meeting the claim requirement.

More specifically, we find that the Specification does not define the term *alert* (FF 1), so we rely on the ordinary and customary meaning as "an alarm or other signal of danger, or an urgent notice" (FF 2). We thus interpret the claim term *alert* to include communication which causes an

alarm or causes one to be put on notice. The claim also requires a *proactive promise alert*, and the Specification describes by example that *proactive* "is meant to show that an alert may be set while there is still time to rectify a possible problem in the process, in this case, shipping" (FF 5).

We thus find that Martin's alert informs a scheduler at the time of order entry (FF 4), and therefore Martin's alerts are *proactive* and pertain to the *promise date*. We therefore find that Martin discloses the generation and displaying of *proactive promise alerts* that identify orders which cannot be delivered by a request date according to a present schedule, meeting the claim language.

Since the Examiner cites to Dietrich for its disclosure of a *proactive alert* and Schoenberg for a *reactive alert*, but since we find that Martin discloses a *proactive alert,* and the claim contains no requirement for a *reactive alert*, we find that for this claim feature, Dietrich is a cumulative reference. We also find that since Examiner grouped claims in the rejection (Answer 4-5), Schoenberg is applied only to claims requiring a *reactive alert*, which does not include claim 1.

Appellants also argue that there is no motivation to combine references, submitting, "Dietrich et al. suggests scheduling a new scheduling event when a plan cannot be satisfied, whereas Martin et al. teaches notifying users of late deliveries for gauging on-time delivery performance." The combination thus defeats the purpose of the reference." (Appeal Br. 9).

We disagree with Appellants because as found above, Martin notifies a scheduler by alert when a request date can not be met by a promise date, and thus does not merely notify users of late deliveries. Additionally, we find that Dietrich discloses a system that "can provide advance warnings to

planners and to the corresponding execution teams" (FF 6), such that Martin and Dietrich each address common problems associated with schedule planning, and thus it is reasonable to combine their teachings and is congruent with the rationale provided by the Examiner for making the combination (Answer 5).

Claims 9-14, Rejection under 35 U.S.C. § 103(a)

We affirm the rejection of claims 9-14. Appellants do not provide a substantive argument as to the separate patentability of claims 10-14 that depend from claim 9, which is the sole independent claim among those claims. Therefore, we address only claim 9. Claims 10-14 fall with claim 9. *See*, 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Claim 9 covers a computer-executable medium that includes substantially all the limitations of the method of claim 1, and requires the computer to *set a reactive alert if the shipment date exists and the request date is less than a user-defined number of days prior to a current date*.

To the extent that Appellants argue deficiencies in the references with respect to *proactive alerts*, we restate our arguments made to those addressing *proactive promise alerts* of claim 1, and thus find Appellants' arguments unpersuasive.

Appellants also argue that the claim requires the request date associated with a *reactive alert* be "prior to a current date" (Appeal Br. 20) but "[a]s stated by Schoenberg et al., the alarm disclosed therein is generated and displayed after a medication time has been missed." (Appeal Br. 21).

We disagree with Appellants because we find the Specification describes that *reactive alerts*, in contrast with *proactive alerts*, do not allow enough time to rectify a problem (FF 5, 7). We understand this to mean that

the *reactive alert* identifies a problem, as opposed to identifying a shipment that went out on time, or an order that is near a ship date, but not yet late. The claim language requires that the *request date* be before the *current date*, and therefore we interpret this to mean that the alert identifies an order past its *request date* that has not shipped or been acted upon, and is therefore late. We interpret a *request date* to be associated with a *reactive alert* that has already past without action, but only by a specified period or less, such as with a *request date* that was recently missed.

Based on this interpretation, we find that Schoenberg discloses a *reactive alert* in the form of a warning to a medical staff that is sent when the *current date* is past a *request date*, occurring when medication or other treatment has not been administered as requested (FF 8). It is common sense that a medical treatment past due would not be allowed to go unanswered for too long, and thus we find that Schoenberg discloses a warning for an order that is past its *request date* by a short period of time, meeting the claim limitation as to *reactive alerts*.

Appellants further argue that the references do not disclose displaying alerts by *type of alert* (Appeal Br. 18-19).

We are not persuaded because we find one of ordinary skill in the art, upon combining the *proactive alert* of Martin with the *reactive alert* of Schoenberg, would also include the type of alert being displayed, because this is a common technique when multiple types of information are displayed so that the information is easier to understand (FF 8).

Appellants finally argue there is a lack of motivation to combine Martin and Dietrich, and Schoenberg and that there is no reasonable

expectation of success from combining them (Appeal Br. 12-13, 16-18, 21-23).

We are not persuaded by Appellants' arguments because the Examiner has provided some articulated reasoning with the following rational unpinning for why a person with ordinary skill in the art would combine Martin, Dietrich, and Schoenberg as follows:

The Examiner found that "early warning system reduces the chance that undesired events will occur" (Answer 5) and that "the user of reactive alerts are helpful management tools for correcting problems when undesired activities have already occurred" (Answer 5).

Martin discloses alerts to planners in a proactive manner when requested dates cannot be met (FF 4).

Dietrich also notifies planners when a request cannot be accommodated by a planned schedule (FF 6).

Schoenberg discloses sending reminders before missing a schedule and warnings after a schedule has not been met (FF 8, 10).

We thus find Martin, Dietrich, and Schoenberg deal with the common fields of scheduling (FF 3, 4, 6, 8, 10), and the common problems of creating schedules including when a request cannot be met by a planned schedule (FF 3, 4, 6), and when a schedule has been missed (FF 8). Therefore, we find there would be a motivation to combine and a reasonable likelihood of success in combining the references because they disclose almost identical approaches to the same problems. For obviousness under § 103, all that is required is a reasonable expectation of success. *Wyers v. Master Lock Co*., 616 F.3d 1231, 1242 (Fed. Cir. 2010).

Claims 15-21, Rejection under 35 U.S.C. § 103(a)

We affirm the Section 103 rejection of claims 15-21. Appellants do not provide a substantive argument as to the separate patentability of claims 16-21 that depend from claim 15, which is the sole independent claim among those claims. Therefore, we address only claim 15. Claims 16-21 fall with claim 15. *See*, 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Appellants argue:

> Claim 15 defines the reactive alert as occurring, in part, when a request date is less than a user-defined number of days prior to a current date. That is, a delivery has not yet been missed, but delivery cannot be made in accordance with the request date if the user-defined number of days is fixed. The alert of Schoenberg et al. indicates that a late delivery has already occurred.

(Appeal Br. 24-25).

Appellants' argument fails at the outset, because it argues a limitation not part of the claim, in that the claim is silent on whether or not a delivery has been missed, or whether a number of days is fixed. The claim only recites that, a *shipment date exists* and a *user-defined number of days.* As we found above with claim 9 and its *reactive alert* limitation, Shoenberg discloses a *reactive alert* when a shipment is past due (FF 8) which meets these limitations. In addition, we find Schoenberg discloses a *reactive alert* in the form of a reminder, which takes place when an order performance date has not yet been missed (FF 10), additionally meeting the claim language. Therefore, even if the claim implies a missed shipment, we find Schoenberg discloses the *reactive alert* consistent with the claim language.

For the remaining arguments, we sustain the rejection of claim 15 for the same reasons set forth above at claim 9.

Claim 4 Rejection under 35 U.S.C. § 112

Appellants respond that claim 4 "calls for, in part, displaying the proactive promise alerts with the order numbers by product category and type of alert. No reactive shipment alert is called for in claim 1 as the Examiner asserts, and thus, there is no confusion as to what claim 4 calls for." (Appeal Br. 4). We agree with Appellants, because we find the term *proactive promise alerts* in claim 4 refers to the same term in claim 1 and cannot be confused with any other term, such as *reactive shipment alerts*, which does not appear in either claim 1 or 4. Thus, even if the only type of alert present is *proactive promise alerts*, requiring the display of this type of alert is not ambiguous. We therefore do not sustain the rejection of claim 4 under 35 U.S.C. § 112 Second Paragraph.

Claims 15-21 Rejection under 35 U.S.C. § 101

Claims 15-21 recite *a computer data signal*. The Specification does not define or describe a *signal* so we broadly interpret the claim scope to include a transient, propagating signal. We therefore sustain the rejection of claims 15-21 as claiming unpatentable subject matter. *In re Nuitjen*, 500 F.3d 1346, 1357 (Fed. Cir. 2007).

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 1-21 under 35 U.S.C. § 103(a) as unpatentable over Martin, Dietrich, and Schoenberg .

The Examiner did not err in rejecting claims 15-21 under 35 U.S.C. § 101 as claiming unpatentable subject matter.

The Examiner erred in rejecting claim 4 under 35 U.S.C. § 112 Second Paragraph as indefinite.

<center>DECISION</center>

The Examiner's rejection of claims 1-21 under 35 U.S.C. § 103(a) is AFFIRMED.

The Examiner's rejection of claims 15-21 under 35 U.S.C. § 101 is AFFIRMED.

The Examiner's rejection of claim 4 under 35 U.S.C. § 112 Second Paragraph is REVERSED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

<center>AFFIRMED</center>

MP

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